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Criminal Law and Procedure—Conviction Of Agent Of Owner For Violation Of Administrative Code Which Referred To Owners Upheld

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also the use of narcotics.[27] The decision in the present case would no doubt be reversed if arising under the present statute and once again the proper balance between the Constitutional rights of the individual and the protection of society against such crimes should be realized.

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CONVICTION OF AGENT OF OWNER FOR VIOLATION OF ADMINISTRATIVE CODE WHICH REFERRED TO OWNERS UPHELD

Defendant, as agent in charge of a multiple dwelling in Manhattan, was convicted of violating a provision of the Administrative Code of the City of New York requiring that every owner of a multiple dwelling file a statement of registration and occupancy. That conviction before the Magistrates Court of the City of New York was reversed and the complaint dismissed by order of the Appellate Part of the Court of Special Sessions of the City of New York, on the ground that the registration requirement imposed by the Administrative Code pertains to true owners only, and therefore did not cover defendant. On appeal by permission, *held*, reversed, three judges dissenting. The Administrative Code provision requiring that owners of multiple dwellings file a statement of registration and occupancy, does not apply to true owners only, but also applies to agents and any responsible person in charge of the premises. *People v. Chodorov*, 12 N.Y.2d 176, 188 N.E.2d 124, 237 N.Y.S.2d 689 (1962).

The Council of the City of New York enacted Title D of the Multiple Dwelling Code[1] in 1955 as an integrated plan for coping with conditions of "overcrowding, excessive occupancy, insufficient sanitation" and other health hazards plaguing the tenement housing of the city.[2] The Council found that the enforcement of multiple dwelling regulations in the past had been severely handicapped by difficulty in identifying, and the unavailability of the persons responsible for the proper maintenance of the buildings within the city.[3] In order to cure this problem section D26-3.1 was passed. The Council sought, by requiring the registration of multiple dwellings and the designation of a person responsible therefor, to eliminate the obstructions of unavailability and lack of identification. Such a law is entirely within the legislative power of the Council[4] as set forth in the Constitution,[5] the New York City Charter,[6] and those provisions of the Multiple Dwelling Law which permit cities to promulgate more

27. See Rochin v. California, 342 U.S. 165 (1952); Blackford v. United States, 247 F.2d 745 (9th Cir. 1957); People v. Sullivan, 18 A.D.2d 1066, 239 N.Y.S.2d 517 (1st Dep't 1963) (*per curiam*); People v. Diaz, 36 Misc. 2d 195, 232 N.Y.S.2d 208 (N.Y.C. Ct. of Spec. Sess. 1962); People v. Ibarra, 30 Cal. Rptr. 223 (2d Dist. Ct. App. 1963).

1. New York City Administrative Code §§ D26-1.0 to -8.0 (1955).
2. New York City Administrative Code § D26-1.0 (1955).
3. *Ibid.*
4. People v. Schildhaus, 17 Misc. 2d 825, 186 N.Y.S.2d 68 (Ct. Spec. Sess. 1959), *accord*, People v. Lewis, 295 N.Y. 42, 64 N.E.2d 702 (1945).
5. N.Y. Const. art. IX, § 12.
6. New York City Charter § 27.

restrictive measures than are provided therein.[7] However, having declared the statutory purpose to be to require "the owner of each multiple dwelling . . . to designate . . . a managing agent in control of and legally responsible for the maintenance and operation of such dwelling . . . ."[8] and then having provided that "every owner of a multiple dwelling shall file . . . the name and business address of a natural person, . . . who shall be designated by such owner as a managing agent in control . . . ,"[9] the Council proceeded to define an owner so as to include managing agents.[10] It is unclear whether the word "owner" is used to mean managing agents in section D26-3.1, for even though section D26-2.2 declares that the specific definitions shall be applied in all instances, "unless otherwise expressly provided," the context of the Registration section seems to militate aganst this application.

It is a well settled principle of interpretation that if two constructions of a statute are possible, that one must be chosen that will cause the least objectionable results.[11] Statutes must be interpreted so as to carry out the general purpose and policy intended to be promoted, even to the extent of foregoing the literal meaning of the words considered.[12] The primary consideration must always be to ascertain and give effect to the intention of the legislators,[13] while at the same time the courts must be cautious to avoid extending the effect of statutory provisions beyond the bounds of legislative intent.[14] The word "owner" has been variously construed according to the circumstances involved and the intent and purpose of the statute under consideration. In an action for personal injuries against the holder of the fee of certain neglected property, the court construed the word "owner," in the statute upon which the claim of liability was based, to mean the one who was in possession and control of the property rather than the defendant fee holder, because the one in possession and control was in the best position to protect against liability.[15] The court pointed out that the chief purpose of the statute was to protect possible claimants, and thought that the party presently in control was at least as likely as the fee holder to be financially responsible. In another context the category of "owner" was widened to include a long term lessee with authority to demolish since "it was the intention of the legislature to afford the remedy or relief provided, not

7. N.Y. Multiple Dwelling Law §§ 3, 365, 366.
8. New York City Administrative Code § D26-1.0 (1955).
9. New York City Administrative Code § D26-3.1 (1955).
10. New York City Administrative Code § D26-2.2, subd. 15 (1955).
11. *E.g.*, People v. Ryan, 274 N.Y. 149, 8 N.E.2d 313 (1937); Surace v. Danna, 248 N.Y. 18, 161 N.E. 315 (1928); Smith v. People, 47 N.Y. 330 (1872).
12. Burch v. Newbury, 10 N.Y. 374 (1852); Reno v. Pinder, 20 N.Y. 298 (1859), *reversing*, 24 Barb. 423 (1859); Holmes v. Carley, 31 N.Y. 289 (1865), *affirming*, 32 Barb. 440 (1865).
13. See generally Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527 (1947).
14. Metropolitan Life Ins. Co. v. Borland, 281 N.Y. 357, 23 N.E.2d 532, *reversing*, 257 App. Div. 950, 14 N.Y.S.2d 147 (1939); Vulcan Rail & Const. Co. v. Westchester County, 250 App. Div. 212, 293 N.Y. Supp. 945 (1937).
15. King v. Six Ninety & Two Realty Corp., 153 Misc. 619, 275 N.Y. Supp. 753 (Sup. Ct. 1934).

only to persons who actually own the property involved, but also to those who have a substantial interest in it and will sustain loss if the property is taken without compensation."[16] While in another case judgment creditors were denied the compensation due to owners because the purpose of the statute involved was to give a railroad company the power of eminent domain, and no provision was made for direct payment to creditors in the condemnation statute.[17]

In the instant case the Court of Appeals found that the specific definition provided by the statute was fully applicable to the context of the Registration section. The court said that "if words are to have their reasonable and natural sense,"[18] then the statute must mean that the specific definition shall be applied wherever the word is used. The court reasoned that in order to accomplish the purpose of the Council, namely identification and acccountability of those legally responsible for building maintenance and operation, the statute must be construed to impose the duty of registration on others besides the true owner, for under a narrower construction, if the true owner failed to file, the law enforcement authorities would be as helpless as before. The State Multiple Dwelling Law section 325 was pointed to as a statute, prompted by the same policy motivations as the present, which clearly requires both owner and agent to file appropriate registration. In view of this Court concluded that it would be unreasonable that the City Council could have intended that only the true owner be constrained to file. The dissent agreed with the Court of Special Sessions and would have affirmed on the theory that the words of the defining section itself rule out the possibility of agents being obligated by the registration section, since the defining section refers to the act of designation, and by so doing recognizes the duality of the parties involved therein. The dissent preferred this to the strained notion of the managing agent being included in the category assigned the task of appointing the managing agent. The Court remanded the case rather than reinstating the conviction even though the court below reversed on the errors of law only, because that court failed to make a statement under, as required by section 543(2) of the Code of Criminal Procedure, to the effect that the fact findings in the Magistrates Court were affirmed.

The instant case presented a perfect opportunity for the application of all the rules directing an interpretation that effectuates the intent of the legislators. Both the majority and the dissent were able to make reference to the words of the statute to support their conclusions. It would appear that the majority regarded the "legislative declaration" as decisive, and adopted the broad definition so as to assure registration and the availability of a responsible person. The dissenting opinion failed to present contrary policy considerations. The decision makes possible the conviction of persons like the defendant who have not

16. Kresge Co. v. City of New York, 194 Misc. 645, 87 N.Y.S.2d 313 (Sup. Ct. 1949).
17. Watson v. New York Cent. R.R., 47 N.Y. 157 (1872).
18. Instant case at 179, 188 N.E.2d at 125, 237 N.Y.S.2d at 610.

consented to the status of managing agent. The statute requires that a certificate designating a managing agent bear the consent of the designee.[19] In deciding that the provision requiring designation of a managing agent applies to the defendant, the court deprives him of his opportunity to decline the responsibility of that position. At the sentencing of the defendant his attorney presented the proposition that defendant had been made the dupe of unscrupulous owners.[20] The present decision might have the effect of fostering this practice. Of course the defendant's status as a person responsible for a multiple dwelling was not disputed and ample evidence of his agency was presented in the trial court, but it is not certain that he would have accepted the position if he had been fully aware of the responsibility involved. By the present decision the agent is deprived of notice of his official responsibility. The Court sought to make a responsible person available to city law enforcement officials. It must be wondered if this purpose has been, or will be accomplished. The true owners remain unscathed while the defendant suffers the penalty of law. It is doubtful that he is capable of remedying the unhealthy conditions, the elimination of which is the ultimate goal of the statute. The true owners are no more constrained to do so than before.

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SEARCH AND SEIZURE AUTHORIZED AS INCIDENT TO LAWFUL ARREST DESPITE FAILURE TO STATE AUTHORITY AND CAUSE

On June 25, 1960, a jewelry story in New York City was burglarized. Approximately two months later the FBI relayed information to the New York Police indicating that a certain Joseph Coffey was one of the burglars and that he would be attempting to sell some of the plunder on August 30 at a certain street corner in Brooklyn. After being briefed at FBI Headquarters, the two New York detectives accompanied the agents to the designated street corner where they saw Coffey and two other men get into a car. After following this car for a time and seeing one passenger disembark, the FBI agents ordered an arrest. The detectives thereupon approached the car and took Coffey and his passenger into custody. The officers had neither a search nor arrest warrant. A search of Coffey's passenger yielded an envelope containing diamonds. At the trial of Coffey for third degree burglary these diamonds were introduced into evidence despite the defendant's objections. Coffey was convicted of third degree burglary. While this conviction was being appealed to the Court of Appeals of New York, the Supreme Court of the United States rendered its historic *Mapp v. Ohio*[1] decision. Thereafter evidence gathered as a result of an unconstitutional search and seizure was to be excluded in state as well as

19. New York City Administrative Code § D26-3.1 (1955).
20. Record pp. 97-106.

1. 367 U.S. 643 (1961).